

SOUTH DAKOTA DEALER MANUAL

- Section 1 -- Requirements to be a Licensed Vehicle Dealer
- Section 2 -- Grounds for a Cease and Desist Order, Monetary Penalty Assessment, Denial, Revocation or Suspension of a License
- Section 3 -- Record Keeping
- Section 4 -- Title Requirements
- Section 5 -- Leased and Rented Vehicles
- Section 6 -- Dealer Plates and Permits
- Section 7 -- Transportation of Manufactured/Mobile Home
- Section 8 -- Consignment Sales by Dealers or Public Auctions
- Section 9 -- Dealer's Car Auction Agency
- Section 10 -- Emergency Vehicle Dealer
- Section 11 -- Manufacturer, Customizer and Dealer Temporary Permits
- Section 12 -- Buyer's Guide
- Section 13 -- Driver's Privacy Protection Act (DPPA)
- Section 14 -- Incentive Advertisement Rules
- Section 15 -- Manufacturer's Statement of Origin/Manufacturer's Certificate of Origin and Vehicle Identification Number Requirements
- Section 16 -- Online Dealer Computer System
- Section 17 -- Plate with Owner Licensing System
- Section 18 -- Form Requests
- Section 19 -- Supplemental Information

SECTION 1

REQUIREMENTS TO BE A LICENSED DEALER

SECTION 1

REQUIREMENTS TO BE A LICENSED DEALER

South Dakota requires that people who engage in the business of selling vehicles/boats, whether exclusively or in addition to any other occupation have a dealer license.

A vehicle dealer is defined as: “any person who for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles.”

A used vehicle dealer is defined as: “any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of used vehicles or who is engaged in the business of selling used vehicles.”

A trailer dealer is defined as: “any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new or used trailers, semitrailers, recreational park trailers, or travel trailers or who is engaged in the business of selling new or used trailers, semitrailers, recreational park trailers, or travel trailers whether or not such vehicles are owned by such person.”

A mobile home dealer is defined as: “any person, other than a manufacturer of a mobile home or a manufactured home, who for a commission or with the intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale, or makes an exchange of a mobile or manufactured home or who is engaged in the business of selling mobile or manufactured homes.”

A snowmobile dealer is defined as: “any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new or used snowmobiles, or who is engaged wholly or in part in the business of selling new or used snowmobiles.”

A boat dealer is defined as: “any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents, or leases with the option to purchase, offers or attempts to negotiate a sale or exchange of new or used boats or who is engaged wholly or in part in the business of selling new or used boats.”

Emergency vehicle dealer is defined as: “any person who converts or manufacturers authorized emergency vehicles and who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new, or new and used authorized emergency vehicles, or who is engaged wholly or in part in the business of selling new, or new and used authorized emergency vehicles.” The term includes the submission of a bid proposal for the sale of a vehicle if the bid proposal is offered in response to a bid request originating in this state.

A Final Stage Manufacturer Dealer is defined as: “any person who assembles or installs on a previously assembled new motor vehicle chassis cab any special body or equipment that forms an integral part of the motor vehicle, constituting a major manufacturing alteration, and completes the vehicle.”

There are exceptions that have been granted from the requirements of having a dealer’s license.

1. Any receiver, trustee, administrator, executor, guardian or other person appointed by or acting under the judgment or order of any court.
2. Any public officer while performing the officer’s official duties.
3. Any employee of any person licensed as a vehicle dealer if engaged in the specific performance of the employee’s duties.
4. Any person not engaged in the sale of vehicles as a business who operates fleets of vehicles and is disposing of vehicles used in the person’s business if the same were acquired and used in good faith and not for the purpose of avoiding the provisions of dealer licensing.
5. Any regulated lenders as that term is defined in §54-3-14, an insurance company authorized to do business in this state or any financing institution as defined in and licensed pursuant to chapter 54-7 that acquires vehicles as an incident to its regular business.
- 5A. Any financial institution chartered or licensed in any other jurisdiction that acquires vehicles as an incident to its regular business and sells such vehicles to licensed dealers.
6. Any vehicle rental and leasing company that sells its used vehicles to licensed dealers.

7. Any nonprofit automobile club if selling automobiles twenty years old or older.

8. Any person engaged in the business of manufacturing or converting new vehicles if selling such vehicles to a licensed dealer holding a franchise from the original manufacturer of the vehicle.

9. Any person acting as an auctioneer if auctioning South Dakota titled vehicles for a licensed dealer or a person who is exempt from the provisions of dealer licensing.

10. Any towing agency that acquires and sells a vehicle which has been towed at the request of a private landowner under the provision of chapter 32-36 or at the request of a law enforcement officer, if no vehicle is sold for an amount over two hundred dollars.

11. Any person not engaged in the sale of vehicles as a business and is disposing of vehicles used solely for personal use if the vehicles were acquired and used in good faith and not for the purpose of avoiding the provisions of dealer licensing.

Dealer license applications are obtained from the county treasurer in the county where the licensee will be conducting business. No applicant, nor any other partner, member, officer or financial supporter of the dealership may have been convicted of a crime involving vehicle theft or fraud in the last five years. The fees for dealer license depend on the type of license the dealer is obtaining.

1. Vehicle dealer license -- \$300
2. Used vehicle dealer license -- \$300
3. Mobile/manufactured home dealer license -- \$300
4. Motorcycle dealer license -- \$250
5. Snowmobile dealer license -- \$150
6. Trailer dealer license -- \$125
7. Boat dealer license -- \$250
8. Emergency vehicle dealer license -- \$300

9. Final Stage Manufacturer dealer license -- \$300

A vehicle dealer's license and used vehicle dealer's license allows the licensee to sell a broad range of vehicles. In addition to being able to sell vehicles, they are also able to sell motorcycles and trailers without specifically acquiring those licenses. A dealer selling low-speed vehicles must be licensed as a vehicle dealer or used vehicle dealer. A boat dealer license allows a boat dealer to sell boat trailers without a separate license. However, dealers of motorcycles, trailers, mobile/manufactured homes and snowmobiles must have that specific category of license.

A dealer's license authorizing the sale of new vehicles, listing vehicles the dealer is authorized to sell, will not be issued until a franchise agreement between the dealer and the manufacturer of the new vehicles the dealer proposes to deal in is filed with the department. If a franchisor seeks to terminate or not continue the franchise, unless the dealer elects to voluntarily terminate the franchise, or seeks to enter into an additional franchise of the same make of vehicle that is already represented in a community, the franchisor must notify the department.

In addition to the other requirements set out for a license, a new vehicle dealer must have, within the principal place of business, or within the county of the principal place of business, a repair shop, with space to repair, service, maintain and recondition one or more vehicles and shall be equipped with ample tools, parts and accessories.

The dealer license application must be completed in its entirety and submitted with the fee, original surety bond, a certificate of public liability insurance (when the license requires insurance), and written verification of conformance with land use ordinances, building codes, and zoning from the city or county. The application and fees are forwarded from the county treasurer's office to the Division of Motor Vehicles in Pierre. The application is then routed to the dealer inspector.

During licensing year 2000, a staggered license renewal system was implemented for all license types. Effective April 2012, within 3 months of expiration of a dealer's license, the dealer receives notice through the dealer computer system that the dealer license is up for renewal. The dealer prints the license renewal and billing off of the system. The license renewal notice and billing must be reviewed, updated, and submitted, along with required fees, to the county treasurer's office of the county in which the dealership is located

prior to the expiration of the license. **(Note: If the notice is not submitted by the deadline date, an initial license fee will be assessed.)**

When an initial license is issued, the license is issued for a 12-month period. During the following renewal period, the license renewal and billing period includes only those months that will take the dealer to his requested/assigned staggered registration month, provided a dealer opts to change his renewal month from the month of his original application for license. If the assigned staggered registration renewal month is within 6 months of expiration of the current license, fees are assessed into the next licensing year. The renewal fee is prorated according to the number of months in the billing period.

The license renewal notice and billing also includes dealer plates assigned to the dealership. When increasing or decreasing the number of plates assigned, the change must be noted on the notice and the billing adjusted accordingly.

The actual (paper) dealer license and dealer plates are issued with an expiration date of 2015 (5-year cycle). The license, however, must be renewed annually by following the procedure noted above (verifying and submitting the license renewal notice and billing, along with the required fees, to the county treasurer of the dealership).

The renewal fee, if submitted prior to the expiration of the old license, is based on the following schedule:

1. Vehicle dealer license -- \$175
2. Used vehicle dealer license -- \$175
3. Mobile/manufactured home dealer license -- \$150
4. Motorcycle dealer license -- \$150
5. Snowmobile dealer license -- \$125
6. Trailer dealer license -- \$100
7. Boat dealer license -- \$175
8. Emergency vehicle dealer license -- \$175
9. Final Stage Manufacturer license -- \$175

A surety bond is required for most licensed dealers. The bond must be executed by the applicant as principal and by a surety company qualified to do business in the state as surety. The amount of the bond is based upon the type of license applied for.

1. Vehicle dealer license -- \$25,000
2. Used vehicle dealer license -- \$25,000
3. Mobile/manufactured home dealer license -- \$25,000
4. Motorcycle dealer license -- \$5,000
5. Trailer dealer license -- \$10,000 for trailers weighing 3,000 pounds or more
6. Snowmobile dealer license -- \$5,000
7. Boat dealer license -- \$20,000
8. Final Stage Manufacturer license -- \$25,000

Vehicle dealers, used vehicle dealers and motorcycle dealers are obligated to have a public liability insurance policy of not less than three hundred thousand dollars. This is not required of trailer dealers, snowmobile dealers, mobile/manufactured home dealers, and boat dealers.

All applicants and existing dealerships must have a principal place of business that conforms to the laws and rules under dealer licensing. For vehicle, used vehicle, motorcycle, trailer, and boat dealers, this requires an enclosed structure located within the state, easily accessible and open to the public at all reasonable times. There must be an improved area adjoining the building that is large enough to display five or more vehicles/boats of the type the dealer is licensed to sell.

Additionally, the principal place of business location must accord to all applicable land use ordinances, building codes and zoning. It is the location that all books, records and files necessary to conduct business are kept and maintained. In no event may rooms in a hotel, motel, apartment house or any part of a single or multiple unit dwelling house be considered a "principal place of business", unless the entire ground floor is devoted principally to, and occupied for, commercial purposes. The principal place of business must have separate office space for conducting business if more than one business occupies the structure. To maintain a principal place of business, the licensed dealer must be open for business on a continuing basis, with normal business

hours posted in a place visible for viewing by the public. The dealership must maintain a telephone and telephone number, with the number being listed in the white or yellow pages, in the name of the dealership. In the event the principal place of business is in a structure which houses more than one business, the dealer's office must be separate from the other business. A dealer inspector must inspect all principal places of business and certify they are in accordance with the law before a dealer license is issued.

The principal place of business for mobile/manufactured homes is essentially the same as previously stated, however, there are some differences. The place of business for mobile/manufactured home dealers may not be a tent, temporary stand or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. The licensee may use unimproved lots and premises for sale, storage and display of mobile homes and manufactured homes. A licensee may use a residence located within or adjacent to his mobile home park or a manufactured home park as a principal place of business unless prohibited by local zoning.

A snowmobile dealer must have a place of business in which the records, books and files necessary to conduct business are maintained and available for inspection.

In addition to the other requirements set out for a license, a new vehicle dealer must have within the principal place of business or within the county of the principal place of business, a repair shop with space to repair, service, maintain and recondition one or more vehicles and shall be equipped with ample tools, parts and accessories.

Every person licensed as a dealer shall display his license in a conspicuous place at the principal place of business.

A dealer licensee is allowed to move a principal place of business to a new location within the county. The Office of Dealer Licensing must be notified in writing 30 days in advance of the proposed move. A dealer inspector, to insure it meets the requirements mentioned previously, shall inspect the new principal place of business. The dealer will be required to furnish written verification of conformance with building and zoning from the city or county on the new location. The bond and insurance on file with the department must also be updated, if needed, with new certificates or riders.

A dealership temporarily closed must conspicuously display notification in public view at the established place of business. Written notice must be sent to the department 30 days in advance of temporary closing.

A licensee is permitted to sell, store and display vehicles/boats on premises other than their principal place of business. This location is called a supplemental lot and requires a supplemental license. The supplemental lot may be an unimproved lot and must meet all local zoning codes and ordinances. The lot must be located within the county for which the original license is issued. The dealer inspector must inspect the location for approval prior to the supplemental license being issued. Titles and paperwork on vehicles/boats sold at a supplemental dealership must be completed under the primary dealership license. The dealership name used for a supplemental dealership must be the same name as the primary dealership or must have the primary dealership name incorporated into it. The title and paperwork must list the primary dealership name. Advertising also falls under these guidelines. There is no additional fee for the supplemental license. If a dealer chooses to operate a supplemental dealership under a separate name from the primary dealership, the business is not considered a supplemental dealership and a separate license is required.

A dealer licensed under S.D.C.L. 32-6B may **display** vehicles within the corporate limits of a municipality where the dealer is licensed.

A temporary supplemental lot is a location other than the principal place of business or supplemental lot within the same county as the principal place of business, or within the corporate limits of a municipality which overlaps boundaries of a county, or in an *adjoining county, where a licensee may conduct business for a period of time which may not exceed ten consecutive days. This type of lot is for a specific purpose such as fairs, auto shows, auctions, shopping center promotions or tent sales. Temporary supplemental lots shall meet all local zoning and building codes for the type of business being conducted. An additional license is not required for these lots.

[*The adjoining county can have no licensed (new) vehicle dealer selling automobiles, pick-ups, or passenger vans and can be no more than 10 miles from the principal place of business. If a licensed new vehicle dealer establishes a temporary supplemental lot in a county with a licensed used vehicle dealer, a licensed used vehicle dealer may establish a temporary supplemental lot in a county with a licensed new vehicle dealer.]

A licensed vehicle dealer may establish, for manufactured sponsored events, a temporary supplemental lot in an adjoining county that has no like franchised licensed dealer.

A temporary special events lot is a location other than the principal place of business, supplemental lot, or temporary supplemental lot outside the county of the principal place of business where a licensed trailer dealer, a licensed used or new vehicle dealer selling only truck tractors, trailers or motor homes, or any combination, may conduct business for a period of time not to exceed 10 consecutive days for a specific purpose, such as fairs, auctions, shopping center sales, or tent sales. A temporary special event's lot shall meet all zoning and building codes for the type of business being conducted.

An auxiliary lot is a physically separate location, such as a mobile home park, manufactured housing rental community, manufactured housing subdivision, or any residential lot where a licensed mobile home or manufactured home dealer may display manufactured homes or mobile homes. An auxiliary lot may be located outside the county of the principal place of business of the dealer. A dealer must obtain a supplemental license for an auxiliary lot. An auxiliary lot shall meet all local zoning codes and ordinances.

A temporary boat show lot is a location other than the principal place of business or supplemental lot outside the county of the principal place of business where a licensed boat dealer may conduct business for a period of time not to exceed 10 consecutive days for a specific purpose, such as fairs, shopping center sales, or boat shows. A temporary boat show lot must meet all local zoning and building codes.

To enforce compliance with the laws and regulations pertaining to dealers, a dealer inspector/agent of the department may enter both publicly owned and privately owned property and sign complaints when a violation is found.

In each calendar year, a dealer investigation may be performed to determine if any violations exist. The investigation may include an inspection of the principal place of business, supplemental lots, and any books, records or files required by the department. An examination of the titles/MSOs and vehicles owned and offered for sale may also be done.

If a dealer refuses to allow an inspection/investigation, an inspection/investigation will not be done. If during the course of an inspection/investigation, a dealer refuses to allow it to continue, the inspection/investigation will cease. In either case, the department may initiate revocation proceedings against the dealer's license.

SECTION 2

GROUND FOR A CEASE AND DESIST ORDER, MONETARY PENALTY, DENIAL, REVOCATION OR SUSPENSION OF LICENSE

SECTION 2

GROUND FOR A CEASE AND DESIST ORDER, MONETARY PENALTY, DENIAL, REVOCATION OR SUSPENSION OF LICENSE

The department may deny any application, apply a cease and desist order, assess a monetary penalty, or suspend or revoke a license for any of the following:

1. Commission of fraud or willful misrepresentation in the application for or in obtaining a license.
2. Conviction of a felony involving snowmobile/vehicle/boat theft or odometer fraud in the last five years.
3. A violation of any law of this state which relates to dealing in manufactured homes/mobile homes/snowmobiles/vehicles/boats.
4. Failure to comply with any administrative rule promulgated by the department.
5. Perpetration of a fraud upon any person as a result of dealing in manufactured homes/mobile homes/snowmobiles/vehicles/boats.
6. Failure to apply for transfers of title as required in chapter 32-3 and 32-3A, 32-20A, 42-8.
7. Failure to allow department inspections, including initial and annual inspections, complaint investigations and necessary follow-up inspections.
8. Misrepresentation through false, deceptive or misleading statements with regard to the sale or financing of manufactured homes/mobile homes/snowmobiles/ vehicles/boats which a dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised or made in any manner with regard to the sale or financing of manufactured homes/mobile homes/snowmobiles/vehicles/boats.
9. Refusal to comply with a licensee's responsibility under the terms of the new manufactured home/mobile home/snowmobile/vehicle/boat warranty issued by its respective manufacturer, unless such refusal is at the direction of the manufacturer.

10. Failure to comply with the terms of any bona fide written, executed agreement pursuant to the sale of a manufactured home/mobile home/snowmobile/vehicle/boat.
11. Inability to obtain or renew surety bond or to participate in a dealer asset pool.
12. Failure to maintain and continuously occupy a principal place of business.
13. Failure to obtain or renew a public liability insurance policy of not less than three hundred thousand dollars.
14. Failure to disclose damage to a new snowmobile of which the dealer had knowledge if the dealer's actual cost to repair exceeds five percent of the manufacturer's suggested retail price.
15. For a dealer of manufactured/mobile homes, a previous manufacturer or dealer license revocation in this or any other state.
16. Violation by the dealer of an applicable manufactured home building or safety code.
17. For a manufactured/mobile home dealer, failure to deliver the MSO or title to the county treasurer within 30 days after the date of delivery.
18. For a manufactured/mobile home dealer, conviction within the previous 5 years of a crime that relates directly to the business of the dealer or manufacturer involving fraud, misrepresentation or misuse of funds.
19. For a manufactured/mobile home dealer, misuse of the dealers' metal plates and lending for use on manufactured/mobile homes not owned by the manufacturer or dealer.

The department may issue an order directing a dealer to cease and desist from engaging in any act or practice in violation of any of the provisions listed above. A cease and desist order is effective for a period of 2 years.

Within 20 days after service of a cease and desist order, a dealer may request, in writing, a hearing to contest the order. Hearings shall be heard by the Office of Hearing Examiners.

If a dealer fails to comply with a cease and desist order, the department may:

1. Impose a monetary penalty on the dealer of \$500 for each violation of the cease and desist order;
2. Suspend the dealer's license for not more than 30 days; or
3. Revoke the dealer's license.

Within 20 days of service of an order, a dealer may request, in writing, a hearing to contest the order. Hearings shall be heard by the Office of Hearing Examiners.

Upon suspension or revocation, a dealer shall immediately return all dealer metal plates and surrender the license certificate. Failure to do so is a Class 2 misdemeanor.

A cease and desist order is effective and stays on the dealers record for a period of 2 years.

SECTION 3
RECORD KEEPING

SECTION 3

RECORD KEEPING

Every dealer licensed in South Dakota is required to keep records of their business transactions. The form of record keeping shall be as prescribed or approved by the department. The dealer must maintain all records subject to inspection for five years.

A licensee shall keep the following records:

1. A record (ledger) of the purchase, sale or exchange of any vehicle (includes trailer, motorcycle, snowmobile, mobile or manufactured home and boat).
2. A description of each vehicle purchased, sold or exchanged, together with the name and address of the owner or other person from whom the vehicle was purchased or received, and to whom it was sold or delivered. The description shall include the vehicle identification number, manufacturer's make and model and vehicle's odometer mileage.
3. A certificate of title from the previous owner of any vehicle not purchased from the manufacturer, from the time the vehicle is delivered to the dealer until it has been disposed of by the dealer.

A dealer may offer for sale, sell, or exchange a vehicle without a certificate of title if the dealer complies with the following applicable provisions:

1. The dealer has a record of the purchase, sale or exchange of a vehicle [purchase agreement or bill of sale] to include the satisfaction of any outstanding liens or encumbrances [proof of satisfaction of a lien shall be a copy of the check and the certified return receipt mail card or the confirmation number, if payment is made electronically] and a secured power of attorney;
2. If the vehicle is encumbered by a lien noted on the title or SDcars system, the dealer shows that payment has been tendered to the lienholder for the amount of the lien, except a lien that is the result of dealer inventory financing [proof that payment has been made shall be a copy of the check and the certified return receipt mail card or the confirmation number, if payment is made electronically]; or

3. If the dealer is required by law to obtain title prior to offering the vehicle for sale and the dealer has applied for title through the electronic on-line title system and has submitted the documents to the department.

NOTE: SALE WITHOUT POSSESSION OF A CERTIFICATE OF TITLE DOES NOT RELIEVE A DEALER FROM THE REQUIREMENTS OF DELIVERY OF TITLE WITHIN 30 DAYS OF SALE OF A VEHICLE.

If a vehicle is financed through a financial institution and the financial institution holds the title as collateral, a copy of the front and back of the title shall be retained by the dealer. The dealer must notify the department in writing if a financial institution is holding titles.

Title on a vehicle with a manufacturer's weight of 26,000 pounds or greater that has been assigned to the dealer may be kept at another South Dakota dealership owned by the same dealer. A copy of the front and back of the title must be kept at the location where the vehicle is being offered for sale and the dealer must notify the department in writing as to where the title is to be kept.

If there is an agreement that the dealer will satisfy a lien amount by paying the lienholder who is noted on a title, the dealer must satisfy the lien within 10 business days after receipt of funds. The dealer may not offer the vehicle for sale until payment has been tendered to the lienholder (except on a consigned vehicle, whereby the dealer must comply with the terms of the consignment agreement).

Proof of payment of a lien will be a copy of the check. The lien payment check must be mailed by certified return receipt mail, unless satisfaction of the lien is done electronically, in which case proof shall be the confirmation number.

Failure of the dealer to satisfy a lien within 10 business days after receipt of funds constitutes theft pursuant to chapter 22-30A.

A dealer is required under law to place a notice on **any** vehicle/large boat sold or offered for sale that has a salvage title, damage disclosure, or similar notation that indicates damage to the vehicle/large boat on it. The notice must be printed on white NCR paper, measuring 4" x 6". The original is to be retained by the dealer and the copy is to be given to the purchaser. The information on the notice is to be printed in 12-point (minimum) Universe – bold – capital letters. The notice must be posted on the inside of a side window with the front of the form facing the outside, or in the case of a boat, on the front window so that it is clearly visible at all times on each vehicle/large boat that contains a salvage title, damage disclosure, or similar notation offered for sale to consumers. At the time of sale of the vehicle/large boat, the dealer

must remove the notice and have the purchaser sign and date it. The dealer must retain the signed notice, along with copies of the title document, for 5 years from the date of sale.

If a dealer fails to display a damage disclosure notice (disclosure must be signed by the purchaser upon sale of a vehicle/large boat), the purchaser may return the motor vehicle/large boat to the dealer within 10 days after receiving the title (or, if title held be lienholder, the lienholder's notice of filing form) and shall receive a full refund.

Other documents that must be available at the dealership include: public liability insurance policy when applicable, franchise agreements when applicable, if the property the dealership is located on is leased, a copy of the lease. All of these documents shall be open to inspection by any law enforcement officer or departmental inspector.

A dealer inspector may visit a dealership to inspect records, review any changes in laws, verify dealership information and answer any questions that have arisen. Records must be available upon request for examination anytime during regular business hours. Each inspection is documented by a dealer inspection report. The report is also used whenever complaints are investigated or for informational matters. The reports are part of the permanent dealership file.

SECTION 4
TITLE REQUIREMENTS

SECTION 4

TITLE REQUIREMENTS

A dealership must have a title for each vehicle (includes motorcycle, trailer, snowmobile, mobile/manufactured home and boat) that is being offered for sale.

A dealer may offer for sale, sell, or exchange a vehicle (includes trailer, motorcycle, snowmobile, mobile/manufactured home and boat) without a certificate of title if the dealer complies with the following:

1. The dealer has a record of purchase, sale, or exchange of a vehicle [purchase agreement or bill of sale] to include the satisfaction of any outstanding liens or encumbrances [proof of satisfaction of a lien shall be a copy of the check and the certified return receipt mail card or the confirmation number, if payment is made electronically] and a secured power of attorney.
2. If the vehicle is encumbered by a lien noted on the title, the dealer shows that payment has been tendered to the lienholder for the amount of the lien, except a lien that is the result of dealer inventory financing [proof that payment has been made shall be a copy of the check and the certified return receipt mail card or the confirmation number, if payment is made electronically]; or
3. If the dealer is required by law to obtain title prior to offering the vehicle for sale and the dealer has applied for title through the electronic on-line title system and has submitted the documents to the department.

If a vehicle is financed through a financial institution and the financial institution holds the title as collateral, a copy of the front and back of the title is sufficient; or a title on a vehicle with a manufacturer's weight of 26,000 pounds or greater that has been assigned to the dealer may be kept at another South Dakota dealership owned by the same dealer. A copy of the front and back of the title must be kept at the location where the vehicle is being offered for sale and the dealer must notify the department in writing as to where the title is to be kept.

Upon the sale of a vehicle, a dealer must deliver title to the purchaser within 30 days of sale of a vehicle.

Upon the sale of a manufactured/mobile home by a dealer, the dealer shall deliver the MSO or title, together with the required fees and completed forms, to the county treasurer within 30 days of the sale.

There are only two situations in which a (secure) power of attorney can be used by a dealer to assign a conforming title on a qualifying vehicle: 1) if the title is lost and a duplicate title is being applied for; or 2) if the title is being held by a lienholder.

In the event a dealer cannot deliver title to a retail customer within 30 days of the date of sale because a lienholder fails to release the lien or deliver the title, the dealer may apply to the division for a 30-day title delivery extension.

The request for an extension must be made within 40 days of the date of sale. A request made after 40 days shall be denied and the dealer is in violation of SDCL 32-3-7 (failure to deliver title within 30 days of the date of sale). To receive an extension, the dealer must provide the division with documentation that supports the steps taken to satisfy the lien in a timely manner and request the title. If the extension is approved, the division will authorize the issuance of a distinctive temporary permit. An extension cannot be authorized for over 30 days.

Titling Procedures:

Out-of-state vehicles: The dealership must obtain a South Dakota title for these vehicles within 30 days of purchase or entry of the vehicle into the state. The out-of-state title, along with the odometer statement and a damage disclosure, if applicable, is submitted to the Division of Motor Vehicles or the county treasurer's office. If the dealer is participating in the state's on-line computer system, the dealer is to enter the application on-line and then submit the paperwork to the Division of Motor Vehicles or the county treasurer. The title must be completely filled out and all assignments attached. [The dealership is allowed to offer the vehicle for sale before receiving a South Dakota title if South Dakota license plates are purchased for the vehicle or if the dealer has applied for title through the electronic on-line title system and has submitted the documents to the department.]

This requirement does not apply to vehicles taken in on trade on a new or used vehicle; a used vehicle purchased by a dealer and sold to another dealer (the dealer that subsequently retails the vehicle must title it prior to offering it for sale); vehicles with a gross vehicle weight rating of over 26,000 pounds; semi-trailers with a manufacturer's shipping weight of 9,000 pounds or more; boats; or mobile/manufactured homes.

Vehicles/boats traded from out-of-state: The dealership does not need to make application for a South Dakota title on these. The title must be assigned to the dealership when traded. When the vehicle/boat is sold, the assignment is from the dealership to the purchaser, using the reassignment section on the out-of-state title. On vehicles and boats, if applicable, a damage disclosure form (from the person trading in the vehicle/boat) must be attached and on vehicles, if applicable, a completed odometer statement and a Division of Motor Vehicles “Form 39” must be attached.

Vehicles from out-of-state purchased for wholesale: The dealership does not need to make application for a South Dakota title on a vehicle purchased by a dealer and being sold to another dealer. The dealer that purchases the vehicle for retail sale, however, is required to obtain title prior to selling the vehicle. [The dealership is allowed to offer the vehicle for sale before receiving a South Dakota title if South Dakota license plates are purchased for the vehicle or if the dealer has applied for title through the electronic on-line title system and has submitted the documents to the department.]

Vehicles/boats purchased in state: The title must be assigned to the dealership. The odometer statement and damage disclosure, when applicable, must be completed.

Vehicles/boats traded in state: The title must be assigned to the dealership. The odometer statement and damage disclosure, when applicable, must be completed.

Boat Titling:

Boats over 12 feet in length or motor boats of any length, except canoes, inflatable vessels, kayaks, sailboards and seaplanes, purchased or acquired by residents of this state, are required to be titled at time of registration. A boat subject to titling is also subject to the 3% excise tax, unless otherwise exempted. Boats that are not subject to the excise tax are subject to sales tax, unless otherwise exempted.

Odometer Requirements:

Odometer statements are required on vehicles 16,000 pounds or less and vehicles that are 9 years old or less. Federal and state odometer laws require the hand-printed name of the buyer and the seller, the hand-written signature of the buyer and seller, the address of the buyer and seller, the date of sale, and the odometer reading, along with specified odometer indicators. A dealer

must, upon sale of a vehicle, retain a copy of the front and back of the title after the title assignment has been made.

Salvage Title:

A salvage vehicle is any vehicle that an insurer or self-insurer determines a total loss due to theft or to damage caused by fire, vandalism, collision, weather, submersion in water, or flood.

Salvage applies to automobiles, motor trucks, truck tractors, semi-tractors, and motor homes that are 16,000 pounds (gvwr) or less and that are 6 years old or less.

If any insurer, in settlement of a total loss insurance claim, or self insurer acquires ownership of a salvage vehicle that does not have a salvage title, the insurer must within 30 days following acquisition of the title of that vehicle surrender the title to the department. A title indicating salvage will be issued to the insurer or self insurer.

If any insurer or self insurer declares a vehicle to be a total loss but does not acquire ownership of the vehicle, the owner must obtain a salvage title. The insurer or self insurer must notify the owner, in writing, of the obligation to obtain a salvage title before the owner sells or transfers the title. If the owner sells or transfers the ownership of the vehicle without first obtaining a salvage title, the owner is guilty of a Class 1 misdemeanor.

On any motor vehicle (regardless of age) whose title has been branded as salvage or with any other similar brand by another state or jurisdiction, the applicant shall receive a salvage title or at the option of the owner, a junking certificate.

Out-of state-title brands are displayed on all titles in the previous state field.

Recovered Theft:

If a stolen vehicle is recovered, the insurer or self-insurer, within 30 days of recovery, must inspect the vehicle and apply for title as follows:

- 1) If the vehicle has no damage or the damage is less than that defined under the damage disclosure law (SDCL 32-3-51.8), the existing salvage title must be surrendered. A title marked as recovered theft with no damage disclosure notation will be issued.
- 2) If the vehicle is damaged equal to or greater than that defined under the damage disclosure law (SDCL 32-3-51.8), the existing salvage title must

be surrendered. A title marked as recovered theft with the damage disclosure notation will be issued.

- 3) If the condition of the vehicle is such that it would have been determined a salvage vehicle as defined under the salvage definition (SDCL 32-3-51.19) due to damage to the vehicle, the salvage title is retained.

Damage Disclosure and Title Branding:

Damage disclosure statements are required on vehicles 16,000 pounds (gvwr) or less and vehicles and large boats that are 6 years old or less.

The following transactions do not require a damage disclosure statement: application for duplicate title, correction of title, transfer in which ownership does not change, repossession, operation-by-law, salvage title, rebuilt title, and junking certificate.

The current damage disclosure amount is \$5,000.

On a large boat that is 6 years old or newer whose title has been branded by another state or jurisdiction so that it discloses damage, salvage or a similar brand, the applicant shall receive a title that denotes the damage disclosure notation.

Out-of-state title brands shall be displayed on all titles in the previous state field.

The seller must complete the damage disclosure statement on any (qualifying) vehicle/large boat taken in on trade.

Damage Disclosure Notice:

A dealer is required to place a notice on **any** vehicle/large boat (regardless of age or weight) sold or offered for sale that has a salvage title, damage disclosure or other brand denoting damage on it. The notice must be printed on white NCR paper, measuring 4" x 6". The original is to be retained by the dealer and the copy is to be given to the purchaser. The information on the notice is to be printed in 12-point (minimum) Universe –bold – capital letters. The notice must be posted on the inside of a side window with the front of the form facing the outside, or in the case of a large boat on the front window so that it is clearly visible at all times on each vehicle/large boat that contains a salvage title, damage disclosure, or similar brand denoting damage offered for sale to consumers. At the time of sale of the vehicle/large boat, the dealer must remove the notice and have the purchaser sign and date it. The dealer must

retain the signed notice, along with copies of the title document, for 5 years from the date of sale.

If a dealer fails to display a damage disclosure notice (disclosure must be signed by the purchaser upon sale of a vehicle/large boat), the purchaser may return the motor vehicle/large boat to the dealer within 10 days after receiving the title and shall receive a full refund.

Junking Certificate:

If a vehicle is being parted out, a junking title certificate must be obtained.

A vehicle coming into the state that has a non-repairable, non-rebuildable, unrebuildable, scrap, or similar brand or notation on its title or bill of sale can only receive a South Dakota junking certificate or a “parts only” notation. The vehicle cannot be rebuilt and can only be used as parts for another vehicle.

Lemon Law:

South Dakota’s lemon law applies to new or previously untitled motor vehicles, except motor homes or vehicles having a manufacturer’s gross vehicle weight rating of 10,000 pounds or more. The “Lemon Law Rights Period” is the period ending 1 year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation, whichever occurs first. If a motor vehicle has been returned to the manufacturer under the lemon law provisions, it may not be resold in this state unless: 1) the manufacturer obtains a title branded with the statement that the vehicle was returned to the manufacturer because it did not conform to its warranty, 2) discloses in writing to the purchaser the fact that the vehicle was returned under the lemon law, and 3) discloses in writing to the purchaser the nature of the nonconformity to the vehicle warranty.

Documents Required on Imported Vehicles:

Bill of sale and the foreign registration and/or the MSO or title. (On a new, Canadian manufactured vehicle a “New Vehicle Information Statement” (NVIS) is the Canadian MSO.)

Import Form – US Department of Homeland Security Bureau of Customs and Border Protection Entry – Immediate Delivery Document – Form 7501. Military may use a DD1252 or DD1854 in lieu of Form 7501 (2/10/09).

EPA Form 3520

U.S. DOT Form HS-7 (only needed if the vehicle does not meet the US EPA standards and the EPA form 3520 is not available)

Bond release letter from NHTSA (only needed if the vehicle does not meet the US EPA standards and EPA form 3520 not available)

English translation if documents are in a foreign language

On Canadian vehicles, a Lien Quest form or other documentation verifying lien status (can be obtained from: www.lienquest.com or www.carproof.com).

[A trailer and a boat require the following documentation: Custom Declaration Form, bill of sale and a registration or other ownership documentation.]

Three excise tax, SD damage disclosure form (if applicable); application for title, and driver's license or SSSN of each purchaser.

[The EPA form is only required on the following vehicles: 1968 or older light-duty, gasoline fueled automobiles and trucks; 1975 and older light duty, diesel fueled automobiles and trucks; 1976 and older catalyst equipped vehicles manufactured in conformity with federal emission standards, but which have been driven outside the U.S.; motorcycles manufactured after February 1, 1972; heavy duty engines manufactured after January 1, 1970, to be used in heavy duty trucks and motor homes.]

If an imported vehicle has been previously title and registered in the United States, a US custom form is required, but an EPA form is not required.

Unclaimed Vehicle Due to Unpaid Repair Bill:

A person may apply for a title on any motor vehicle that is left unclaimed, as the result of an unpaid repair bill by its owner or person lawfully in possession of the vehicle, on private property for a period of 30 days after written notice of intent to apply for a title is given to the owner and any readily identifiable insurer or lienholder by certified mail.

The owner, insurer, or the lienholder may reclaim the vehicle. The owner, insurer, or the lienholder shall notify the department and the repair facility within 30 days of receipt of the notice of their intent to reclaim the vehicle. If the owner, insurer, or lienholder fails to claim and remove the vehicle within 30 days after mailing of the notice, title irrevocably vests in the person to whom the repair bill is payable.

The vehicle must be sold at public auction and any excess money above settlement of the debt must be forwarded to the prior owner, insurer, and any other party with a legal interest in such vehicle. If unable to identify the owner, insurer, and any lienholder, the excess money shall be sent to the state treasurer and treated as unclaimed property.

Incorrect Certificate of Title:

Administrative Rule 64:28:10:03 states: Either the county treasurer, the dealer, or the owner shall return certificates of title with errors for correction to the department with a statement of facts explaining the reason for the correction.

The dealer and owner are responsible for assuring that the issued title contains accurate and correct information.

SECTION 5

LEASED AND RENTED VEHICLES

SECTION 5

LEASED AND RENTED VEHICLES

TITLING LEASED/RENTED MOTOR VEHICLES

A. Definitions:

1. "Leased vehicle," A motor vehicle titled in the name of a leasing company or the individual leasing the motor vehicle, which is leased for a period of more than 28 days.
2. "Rental vehicle," A motor vehicle titled in the name of a rental company licensed under 10-45 (sales tax license) which is rented for 28 days or less; or a trailer which is titled in the name of a rental company licensed under chapter 10-45 (sales tax license) and that has an unladen weight of 9,000 pounds or more, that is rented for 6 months or less and that is not consecutively rented to the same person for more than one 6-month period.

B. CLOSED LEASE (TERMS OF THE LEASE ARE KNOWN AT THE TIME THE CONTRACT IS EXECUTED). Vehicles with a gross vehicle weight rating of less than 16,000 pounds and fertilizer vehicles, leased for more than 28 days. (Effective July 1, 2006, motorcycles are included in the lease law.)

1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
2. The lessor and the lessee's name must appear on the title.
3. Under plate with owner, either the lessor or the lessee is the owner of the plates and upon sale or transfer of the vehicle can remove the plates, which can then be attached to a newly acquired vehicle upon title and registration of the newly acquired vehicle through the county treasurer.
 - a. The South Dakota driver's license or social security number of each lessee must be given. If the lessee is a company, the FEIN is required. If the company is a sole proprietorship, the lessee's South Dakota driver's license number or social

security number may be used. The FEIN of the lessor is required.

3. The lessor or the lessee must pay the 3% excise tax on the purchase price of the vehicle (purchase price as defined in 3a).
 - a. Purchase price on a leased vehicle that is a closed lease (terms of the lease are known at the time the contract is executed) is the total consideration whether received in money or otherwise. Total consideration is: all lease payments, including cash, rebates, the net trade-in, extended warranties, administrative fees, acquisition fees, or any other fees assessed on the purchase of the vehicle. Total consideration does not include: title fees, registration fees, vehicle excise tax, federal excise tax attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner, insurance, and refundable deposits.
 - b. Calculation of the tax shall be done on the tax worksheet entitled South Dakota Closed Lease Tax Worksheet (DMV/CLTW). A copy of the worksheet must accompany the application for title and registration (MV608). The signature area must be completed on the worksheet or the purchase price must be certified on the application for title and registration (MV608).
 - c. A copy of the lease agreement is required.
4. If the term of the lease is extended or if the vehicle is leased for an additional period of time; excise tax is assessed on the additional lease payments and must be paid by the lessor.
 - a. If additional consideration is paid during the course of the lease or upon termination of the lease, the excise tax is assessed on such amount and is to be paid by the lessor.

Additional consideration does not include a late fee that a lessor may assess a lessee on a late lease payment.
 - b. The South Dakota tax worksheet entitled, South Dakota Extended or Additional Consideration Lease Tax Worksheet (DMV/LTW.1) is to be used to remit the additional tax.

- c. The title does not have to be submitted but can be if the lessor wants the additional tax to be shown on the title. If the title is submitted a \$5 title fee is required.
- 5. If the lessee buys the vehicle at the end of the lease, excise tax is assessed on the purchase price of the vehicle at the end of the lease.
 - a. The lessor/dealer must assign the title to the lessee and submit the assigned title to the lessee's county treasurer, along with an application certifying the purchase price of the vehicle and the required fees and taxes.
 - b. A lessee who entered into a lease prior to July 1, 2000, and who paid excise tax based on the purchase price of the vehicle, including the value of the leased vehicle at the end of the lease shall receive credit for tax previously paid if the lessee purchases the vehicle at the end of the lease.
 - c. If a lease is terminated prior to the termination date contained in the lease agreement, no refund is given for tax previously paid.
 - d. If prior to the expiration of a lease, the leased vehicle is destroyed by fire, accident or vandalism to the extent that it constitutes a total loss of the vehicle, credit for the lease tax paid for the period remaining on the previous lease is allowed if another vehicle is substituted under the original lease or a new lease is executed with the intent to replace the vehicle subject to the previous lease. The new lease or substituted vehicle under the original lease must be executed by the same lessor and lessee for lease of a vehicle of the same or similar make, model, year and options as the vehicle subject to the previous lease. The lease must be for the remaining lease period as the previous lease, for the same lease price and under the same lease terms as the previous lease.
- 6. Leased vehicles entering the state under a lease are subject to tax on the date the vehicle enters this state for the remaining months in the lease period.

- a. Credit is given for tax that has been paid up-front to another state. The applicant must submit proof of payment of the tax. The lessee and the lessor must remain the same. Calculation of the tax should be done on the South Dakota Closed Lease Tax Worksheet (DMV/CTW). A copy of the lease is required. [No credit is given if payment of the tax on a lease was being made to another state on a monthly basis.]
 - b. In the event tax was being paid by the lessee to another state on a monthly basis, the county treasurer shall require the leasing company making application for title and license to submit a completed application for title and registration, a South Dakota Lease Tax Worksheet For Out-Of-State Vehicle Lease (DMV/OSVLW), and a copy of the lease agreement.
 7. When entering a lease transaction on the computer system that falls under Section 6A above, in which more tax has been paid to another state than is due South Dakota, a tax code 45 should be used. The purchase price, as indicated on the worksheet is entered, the amount of tax paid to the other state is shown as a credit, and no amount is entered in the tax amount area.
- C. OPEN-END LEASE (TERMS OF THE LEASE ARE NOT CERTAIN AT THE TIME THE LEASE IS EXECUTED OR THE LEASE IS OPEN-ENDED). Vehicles with a gross vehicle weight rating of less than 16,000 pounds and fertilizer vehicles, leased for more than 28 days. (Effective July 1, 2006, motorcycles are included in the lease law.)
1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
 2. The lessor and the lessee's name must appear on the title.
 - a. The South Dakota driver's license or social security number of each lessee must be given. If the lessee is a company, the FEIN is required. If the company is a sole proprietorship, the lessee's South Dakota driver's license number or social security number may be used. The FEIN, South Dakota driver's license number or social security of the lessor is required.

3. The lessor or the lessee must pay the 3% excise tax on the purchase price of the vehicle (purchase price as defined in 3a).
 - a. Purchase price on a leased vehicle in which the terms of the lease are either not certain at the time the lease contract is executed or the lease is open-ended, shall be the total consideration whether received in money or otherwise. Total consideration includes the purchase price of the vehicle, plus cash, rebates, net trade-in, extended warranties, administrative fees, acquisition fees, or any other fees assessed on the purchase of the vehicle. Total consideration does not include title fees, registration fees, excise tax, federal excise tax, insurance, and refundable deposits.
 - b. Credit is given for tax previously paid to another state. The applicant must submit proof of payment of the tax. The lessor and the lessee must remain the same.
 - c. No tax worksheet is required on an open-end lease. The purchase price of the vehicle is certified by the dealer on the application for title (MV608) or a purchase order must be submitted to substantiate the vehicles' purchase price.
 4. When entering a lease transaction that falls under Section C above on the computer system, a tax code 46 should be used.
- D. Vehicles with a gross vehicle weight rating of 16,000 pounds or more (excluding fertilizer vehicles...see Section B), leased for more than 28 days.
1. The lessor must title and license the vehicle. In the case of a leasing company within a dealership, the leasing company name must be separate and distinct from that of the dealership.
 2. The lessor and the lessee's name must appear on the title.
 - a. The South Dakota driver's license or social security number of each lessee must be given. If the lessee is a company, the FEIN is required. If the company is a sole proprietorship, the lessee's South Dakota driver's license number or social security number may be used. The FEIN, South Dakota driver's license number or social security number of the lessor is required.

3. The lessor or the lessee must pay the 3% excise tax on the purchase price of the vehicle. A bill of sale or purchase order is needed to establish purchase price, unless the dealer price certification on the application is completed.
 - a. Purchase price on a leased vehicle with a gross vehicle weight rating of 16,000 pounds or more is the total consideration whether received in money or otherwise. [Total consideration is the lessor's purchase price.]
 - b. In the case of a lessor/lessee situation in which a lease vehicle is traded in to a dealer on another lease (no buy-out takes place and the trade takes place with the same leasing company), the trade-in allowance is granted if the trade-in vehicle is in either the lessor or the lessee's name. If the lessee's name does not appear on the title, a copy of the lease agreement or other supporting documentation indicating that the lessee was responsible for payment of the excise tax is required. On titles issued after July 1, 1994, the law requires that the lessor and the lessee be indicated on the title.
4. If the lessee pays the tax and subsequently purchases the vehicle, the lessee must title the vehicle and shall receive credit for tax paid (on a South Dakota title that denotes the lessee and lessor, a copy of the lease agreement is not required).
5. Out-of-state leasing companies titling and licensing a leased vehicle in South Dakota that has been previously titled and licensed in another state shall be exempt from the 3% excise tax to the extent that an equal and similar amount of registration fee, sales tax, use tax, state excise tax (in dollars) has been paid in such other state. The lessee must remain the same.
 - a. The county treasurer shall require the leasing company making application for license of a vehicle to provide proof that a similar and equal amount of tax has been paid in another state.
 - b. If sufficient proof is not furnished at the time of application, the county treasurer shall collect the full amount of the 3% excise tax.

E. Vehicles rented for 28 days or less (includes automobiles, pickups and vans) licensed under the noncommercial license fee schedule (SDCL 32-5-6) with a manufacturers shipping weight, including accessories, of 10,000 pounds or less; trailers with an unladen weight of 9,000 pounds or more that are rented for six months or less.

1. Exempt from the 3% excise tax.

a. A tax of 4 1/2% is imposed upon the gross receipts of any person renting motor vehicles for 28 days or less (see E. for qualifying vehicles). This tax is in addition to any sales tax levied pursuant to chapters 10-45 or 10-46 (4% sales tax, 1% tourism tax

(note: effective July 1, 2009, during the months of June, July, August and September until June 30, 2011, the tourism tax rate increases from 1% to 1-1/2%) plus applicable city tax on rentals of 28 days or less) , plus applicable city tax) on rentals of 28 days or less.

1) Exemption code 19 should be used on the application for title (MV608).

2) Title must be issued in the name of the rental company.

3) If the rental company is within a dealership, the rental company name must be separate and distinct from that of the dealership.

4) If the lessee is a rental company leasing vehicles for use in a daily rental operation, the rental company must be indicated on the title as the lessee.

b. The rental company remits the 4 1/2% gross receipts tax and the rental sales tax to the Sales Tax Office of the Department of Revenue and Regulation on the Sales Tax Return.

c. Title applications on rental vehicles must be accompanied by an affidavit from a representative of the rental company stating that the vehicle is being used for rental. The representative of the rental company will also be required to

state the rental company's sales tax number on the affidavit. (An MV-608 or MV-609 exemption form, which contains this information, may be used in-lieu-of the affidavit.)

- F. All revenues received from the 3% excise tax and the 4 1/2% gross receipts tax are credited to the State Highway Fund.
- G. To apply for South Dakota title and registration, an applicant must complete an Application for Motor Vehicle Title and Registration (MV-608). The application must be filed in the county of the new applicant's residence.
 - 1. The application must be signed by the record owner(s) or by an authorized agent for the record owner(s). If an authorized agent signs the application, a power of attorney document must be attached to verify the appointment.
- H. If the vehicle is new, a manufacturer's statement of origin (MSO) must be attached. If the vehicle is used, a certificate of title, properly transferred to the applicant, must be attached.
 - 1. The purchase price would be the same as previously set out in the section entitled "Definition of 3% Excise Tax".
- I. A properly completed Damage Disclosure Statement form, if applicable, must be attached. The lessor is responsible for completing the Damage Disclosure Statement.
- J. Payment of the correct amount of 3% excise tax (if applicable), a title fee, and any license fee as may be required must be collected. Failure to pay the full amount of excise tax is a Class 1 misdemeanor.

SECTION 6

DEALER PLATES AND PERMITS

SECTION 6

DEALER PLATES AND PERMITS

There are a number of different vehicle/boat licenses that relate to a dealership.

Temporary Thirty-Day License Permit:

In the case of a vehicle/boat that is sold by a licensed dealer, the dealer may provide a temporary thirty-day license permit. The permit authorizes the operation of the vehicle/boat upon the highways/waters of this state for a period of thirty days after the date of sale or until the time the purchaser receives regular license plates from the county treasurer, whichever happens first.

The temporary thirty-day license permit for a vehicle is affixed to the inside windows, to the front at the lower right-hand corner of the windshield, and to the lower left-hand corner of the rear window or to the lower rear portion of the rear window. In the case of motorcycles or trailers, the permit shall be affixed in the manner provided for metal number plates. In the case of a boat, the license must be displayed on or carried in the boat.

The dealer shall write in the expiration date at the time of sale with a black indelible ink felt-tip marker with numbers one inch in height, the rest of the permit may be filled out with a ball point pen.

No dealer may use the temporary thirty-day license permits upon any vehicle/boat owned by the dealer for any purpose other than for vehicles/boats sold by the dealer. No person may renew the temporary thirty-day license permit, nor change or alter the date or other information thereon.

Dealers shall obtain their supply of temporary thirty-day license permits from their own source, but the permit shall conform to the requirements of the department.

If a dealership sells a vehicle and the purchaser uses the vehicle in a commercial venture, a commercial permit will need to be acquired by the purchaser until such time the permanent commercial license is obtained.

Dealer Demonstration/In-Transit Permit:

Any vehicle owned by a licensed dealer bearing dealers' demonstration or in-transit permits may be driven upon the streets and highways of this state for demonstration or in-transit purposes.

Demonstration is defined as: the noncommercial use of a dealer owned vehicle by an employee of the dealership for any purpose in the ordinary course of business relating to the sale of the vehicle within the trade or market area of the dealership or demonstration by any prospective buyer for a period of three days. The term includes vehicles donated by a dealership to a community or organization and used for a one-day parade or event.

In-transit is defined as: the noncommercial use of a dealer owned vehicle by any employee of the dealership for travel to and from any service facility, detail shop, repair shop, gas station, car wash, dealer auction, another lot owned by the dealer, a supplemental lot, temporary special event lot, temporary supplemental lot, or any other location to facilitate a dealer trade.

A dealer or their representative may not issue dealers demonstration/in-transit permits to any vehicle for any other purpose than those mentioned above.

The demonstration/in-transit permit shall not be used on service vehicles, loaners, or in place of regular license plates.

Dealers shall obtain their supply of (blue) demonstration/in-transit permits from their own source, but the permit shall conform to the requirements of the department.

Dealer Plates:

Motorcycle, trailer, and mobile home/manufactured home dealer plates: The department shall issue to every motorcycle dealer and trailer dealer upon application and payment of a \$20 for each plate and to every mobile home/manufactured home dealer, upon application and payment of a fee of \$10 for each plate, dealer's metal number plates. A mailing fee of \$5 per license plate or set of plates when mailed is assessed.

One license plate shall be displayed on the rear of any motorcycle or trailer, semitrailer, travel trailer, or mobile home/manufactured home owned by the dealer.

A prospective buyer may operate any vehicle owned by the licensed dealer and bearing the dealers' metal plate on the streets and highways of this state for any purpose, including demonstration.

Snowmobile dealer plates: The department shall issue license plates of a durable material to license dealers upon application and payment of \$10 for each set desired. A mailing fee of \$1 per decal or set of decals when mailed to a dealer is assessed.

Any new snowmobile or used snowmobile owned by a licensed dealer, bearing dealer's license plates may operate in this state. One plate shall be displayed on each side of the snowmobile. The license plate is transferable by the dealer from one snowmobile owned by the dealer to another snowmobile owned by the dealer.

Boat dealer plates: The department shall issue to a boat dealer, upon application and payment of a fee of \$20 per set, boat dealer license plates. A mailing fee of \$1 per decal or set of decals when mailed to a dealer is assessed.

The boat dealer plates must be displayed on or carried in the boat. Any boat owned by the licensed boat dealer and bearing the dealers' plates may be operated on the waters of this state for any purpose, except on boats that are leased or rented. The plates are transferable by the dealer from one boat owned by the dealer to another boat owned by the dealer.

Snowmobile, boat, trailer, motorcycle demonstration permits: Any snowmobile, boat, trailer or motorcycle owned by a licensed dealer bearing a demonstration permit may operate in this state for demonstration purposes only. Any prospective buyer may operate a snowmobile, trailer, or motorcycle for a period

not to exceed three days; a boat may be operated by any prospective buyer for a period not to exceed 7 days.

Dealers shall obtain their supply of (blue) demonstration permits from their own source, but the permit shall conform to the requirements of the department.

“77” Dealer license plates: Any new vehicle or used vehicle owned by a licensed dealer bearing a dealer’s “77” plate may be driven on the streets and highways of this state for any purpose.

The dealer “77” plate is transferable by the dealer from one vehicle owned by the dealer to another vehicle owned by the dealer.

The dealer “77” plate may not be used on vehicles for lease or hire or on wreckers or service vehicles.

Licensed dealers shall make application and payment of \$84 for each set of license plates desired at the county treasurer’s office. A mailing fee of \$5 per license plate or set of plates when mailed to a dealer is assessed.

“88” Dealer Commercial license plates: Effective July 1, 2004, a dealer may purchase “88” commercial plates that can be used to transport any inventory replacement vehicle. Effective July 1, 2013, these plates can also be used by a prospective purchaser for demonstration purposes for a period of 3 days.

The dealer “88” plate is transferable by the dealer from one vehicle owned by the dealer to another vehicle owned by the dealer.

The actual gross weight of the combination cannot exceed the licensed gross weight.

The dealer is exempt from paying 3% motor vehicle excise tax.

The fee for the plates is based on the commercial declared gross weight fee schedule. A mailing fee of \$5 per license plate or set of plates when mailed to a dealer is assessed.

The gross weight tonnage fee must be paid and the tonnage sticker affixed to the “88” plate prior to operation.

The vehicle must comply with all provisions pertaining to overweight operation.

The dealer must comply with the requirements set out in federal guidelines pertaining to the filing and payment of the federal heavy vehicle use tax (HUVT) on any registration in excess of 27 tons. Before DMV will issue dealer 88 commercial license plates or renew the registration on a dealer 88 commercial plate, the dealer must provide the DMV with a copy of the HVUT Form 2290 stamped and verified by the IRS.

There are exemptions to the HVUT; however, a Form 2290 Schedule is still required to be filed. The exemptions include:

Pertaining to the transportation of inventory replacement vehicles, under the federal regulations, liability for the tax is suspended during a taxable period if the vehicle will be used for 5,000 or fewer miles during the taxable period. A Form 2290 must be filed during the taxable period to support the suspension of the tax.

Pertaining to the transportation of new motor vehicles on a public highway, if such operation is merely for the purpose of transporting the vehicle from the point of manufacture or assembly to a consumer, whether direct or with intermediate deliveries to such points as are involved in the distribution process. A Form 2290 must be filed.

Pertaining to the demonstration of a new or used vehicle, if the operation is exclusively for the purpose of demonstration of the vehicle by a dealer in, or distributor of, new or used vehicles. A Form 2290 must be filed.

If used for demonstration purposes, the dealer must maintain a log detailing use. The log must include: the name and address of the prospective purchaser, the dates of use, and the description of the vehicle including the VIN, make and model. The log must be available for inspection, during normal business hours, by any law enforcement officer or dealer inspector.

Dealer "99" Auction Agency Plates: These plates can be used on any vehicle being transported to or from the auction agency's place of business for the purpose of transporting a vehicle that will be sold or has been sold by the auction agency.

The plates are transferable by the auction agency from one vehicle to another vehicle for transporting purposes.

The annual fee for a set of auction plates is \$84. A mailing fee of \$5 per license plate or set of plates when mailed to a dealer is assessed.

The plates are consecutively numbered and bear as a prefix the number “99.”

Dealer Plate Information:

All dealer plates and temporary permits shall be displayed on the front and back of the vehicle. Trailers and motorcycles are required to have only one permit displayed on the back of the vehicle. Boat licenses are to be carried on or in the boat.

On an out-of-state licensed vehicle that is being placed on a dealer’s lot, the dealer must remove the out-of-state license plates before displaying the vehicle.

If a South Dakota licensed vehicle is placed on the dealer’s lot, the license plates should remain on the vehicle or in the event the dealer chooses to remove the plates while the vehicle is on the dealer lot, the plates must be reinstated on the vehicle upon its sale.

Dealer plates/permits cannot be used on consigned vehicles.

A vehicle used by a dealer to transport inventory replacement vehicles to the dealer’s principal place of business must display commercial license plates, unless dealer “88” commercial plates are used. The only exception is if the vehicle used to transport the inventory is a tow dolly.

Effective July 1, 2008, our current licensing system changed from plate with vehicle to plate with owner. On a consigned vehicle, the plates remain on the vehicle until the vehicle is sold at which time the seller retains the plates and provides the purchaser with a seller’s permit.

Mailing Fees (effective July 1, 2010):

A mailing fee of \$1 per decal or set of decals and a \$5 mailing fee per license plate or set of plates when mailed to a dealer is assessed.

SECTION 7

**TRANSPORTATION OF MANUFACTURED/MOBILE
HOME**

SECTION 7

TRANSPORTATION OF MOBILE/MANUFACTURED HOME

Any transfer or reassignment of a title must be accompanied by an affidavit issued by the county treasurer stating current year's taxes have been paid.

If an owner of a used mobile/manufactured home; regulated lender, as defined in SDCL 54-3-14 (repossessing a used home); transporter; or manufacturer or licensed mobile/manufactured home dealer; prior to moving a home, fails to obtain an affidavit from the county treasurer of the county in which the used home is registered, stating the current year's taxes are paid as described in SDCL 10-21-36 through 10-21-39, inclusive, or SDCL 10-9-3, the department shall assess a monetary penalty of \$250 for the first violation within a one-year period; \$500 for the second violation within a one-year period; and \$1,000 for each subsequent violation within a one year period. The county treasurer shall notify the department, in writing, of any violation for failure to obtain a tax affidavit prior to moving a home.

In addition to a monetary penalty, a transporter or dealer who was responsible for moving a mobile/manufactured home is liable for any property taxes due the county if a tax affidavit is not obtained prior to moving the home.

Any person moving a mobile/manufactured home must have:

- 1) A \$15 single trip permit issued by the county treasurer (unless the home is being moved by or for a licensed mobile/manufactured home dealer).
- 2) An affidavit stating current year's taxes have been paid (issued by the county treasurer where the home is located).

A violation is a Class 2 misdemeanor.

Any manufactured/mobile home purchased or transported by or for a dealer must have:

- 1) On any used home, an affidavit issued by the county treasurer of the county in which the home is registered stating that the current year's taxes have been paid.
- 2) A self-issued permit displayed when moving a used or new mobile/manufactured home.

- 3) When a dealer sells a new, used, or an out-of-state titled mobile/manufactured home and is transporting it to the purchaser, the dealer must file a Property Tax Assessment (PT6) Form with the director of equalization in the county of destination.

Any mobile/manufactured home moved by a transporter must have:

- 1) On any used home, an affidavit issued by the county treasurer of the county in which the home is registered stating the current year's taxes are paid.
- 2) A \$15 single trip permit issued by the county treasurer, unless the home is being moved by or for a licensed mobile/manufactured home dealer.

SECTION 8

**CONSIGNMENT SALES BY DEALERS OR PUBLIC
AUCTIONS**

SECTION 8

CONSIGNMENT SALES BY DEALERS OR PUBLIC AUCTIONS

Any dealer or public auction may sell or offer to sell South Dakota titled vehicles (includes motorcycles, trailers, snowmobiles, mobile/manufactured homes, boats) on consignment; the dealer must be licensed for the type of vehicle being sold on consignment. No person may sell or offer to sell on consignment a vehicle that the manufacturer's statement of origin has not been transferred. A titled vehicle that is at least 20 years old and a motorcycle that is at least 30 years old that is not titled in South Dakota may be sold at a public auction if a title is issued in the name of the seller.

An out-of-state dealer may sell a vehicle that is at least 20 years old or a motorcycle that is at least 30 years old that is titled in the dealer's name (out-of-state title) at public auction if the dealer purchases a permit from the Division of Motor Vehicles. The dealer must prove they are a dealer in good standing in the dealer's home state and has not outstanding dealer violations. The permit is \$250 if purchased before the auction and \$500 if purchased at or after the auction. A dealer in violation shall be denied a temporary permit for a period of 1 year from the date of violation.

A consignment sale, other than a public auction, between dealers is prohibited.

Consignment is defined as: The delivery of a vehicle by the owner into the possession of another without transfer of title for the purpose of sale or where there is any condition that the purchaser does not have an absolute obligation to pay for the vehicle/boat or has a right to return the vehicle to the seller.

Public auction is defined as: a business that is open to the public where South Dakota titled motor vehicles/boats are consigned, displayed, and auctioned to the highest bidder by an auctioneer.

Auctioneer is defined as: a person who presides over a public auction where following an initial starting price, bids are taken from 2 or more people until a final bid or price is established for a motor vehicle.

Any dealer or public auction that sells or offers to sell South Dakota titled vehicles on consignment shall enter into a contract with the consignor. The contract shall contain, at a minimum, the following information:

1. Name and address of consignor (owner);
2. Name and address of consignee (dealer or auctioneer);

3. Vehicle description: title number, year, make, and serial number;
4. When applicable, completed odometer disclosure;
5. Agreed upon price or range;
6. Agreed upon amount that the owner will pay the dealer or auctioneer;
7. Length of time vehicle will be with the dealer or auctioneer;
8. Disclosure by dealer or auctioneer that the sale is a consignment sale;
9. When applicable, completed damage disclosure;
10. Signature of owner and dealer or auctioneer.

The following documents must be available at the dealership or auction prior to sale of a vehicle:

1. South Dakota title in the name of the consignor;
2. Completed and signed consignment sales contract containing information set out above.
3. When applicable, an odometer reading certified by the owner (may be included on contract).
4. When applicable, a damage disclosure statement signed by the owner (may be included on the contract).
5. Federal FTC Buyer Guide must be displayed in a vehicle being offered for sale on dealer lot.

The following documents must be available at the dealership or auction upon sale of a vehicle:

1. South Dakota title properly assigned by the consignor (owner);
2. Bill of sale.
3. Prior disbursement of proceeds if lien is indicated (lien must be satisfied and released).

4. Seller's permit which is provided by the seller to the purchaser upon sale of the vehicle.

A violation of these provisions is a Class 2 misdemeanor.

A dealer and auctioneer are required to keep the following records:

1. Dealer or auctioneer must maintain record of consignment sales for 5 years;
2. Dealer or auctioneer must retain a copy of consignment sales contract for 5 years.

A dealer or an auctioneer may not sell a vehicle that has a title with a lien on it for less than the full amount of the lien, without the advance written consent of the lienholder. A dealer or an auctioneer may not release the proceeds from the sale of a vehicle with a lien until the lienholder signs a release of the lien. A violation of these provisions is a Class 2 misdemeanor.

Every dealer and public auction shall keep books, records and files. A record shall be kept on every vehicle offered for sale, including the serial number or vehicle/hull identification number and a description of the vehicle and the name and address of the owner. If the vehicle is sold, the name and address of the person purchasing the vehicle and the price for which it is sold.

If a dealer takes a vehicle in on consignment and the vehicle does not sell and consequently is returned to the seller, the dealer, in charging the customer a fee for displaying the vehicle on the dealership lot, must charge the customer sales tax. Since commissions are not sales taxed, in the event the dealer sells a consigned vehicle, sales tax is not assessed.

If a vehicle is sold at auction, the auctioneer's commission is subject to sales tax (an auctioneer's commission is specifically taxed under statute).

All records must be open and available to inspection by a dealer inspector.

SECTION 9

DEALER'S CAR AUCTION AGENCY

SECTION 9

DEALER'S CAR AUCTION AGENCY

A dealer's car auction agency includes any person, firm, limited liability company, corporation or association engaged in an auction, as defined by Chapter 59-8, of vehicles. A dealer's car auction agency license is required.

Sales at a dealer's car auction agency shall involve only vehicles owned by dealers and sold to dealers. Exceptions:

1) An auction agency may sell vehicles to dealers that are **owned and titled (in state or out-of-state) by the following entities** if the vehicles were acquired as an incident to its regular business:

(Exception: An auction agency may accept a vehicle for sale by a financial institution chartered or licensed in another jurisdiction in which the title is not in the name of the lienholder provided the title is in the name of the customer and has the proper documentation from the title state that substantiates a repossession transaction (i.e., affidavit of repossession and reassignment). Note: the out-of-state title must be furnished and if the lienholder has a title from a state that requires the lienholder to obtain a repossession title, the lienholder must obtain a repossession title prior to offering the vehicle for sale at auction.)

- a. Any regulated lender as defined in 54-3-14 or any financing institution licensed pursuant to Chapter 54-7.
- b. Any financial institution chartered or licensed in any other jurisdiction.
- c. Any insurance company authorized to do business in either this state or some other state.

An auction agency may also accept from any manufacturer any vehicle that is owned by the manufacturer and that has a MCO/MSO or a valid title.

- a. Any vehicle with a MCO/MSO sold for a manufacturer can only be offered to the manufacturer's franchised dealers with the same vehicle make.

An auction agency may also sell vehicles owned by any governmental entity to any member of the public. A sale of these vehicles to the public may **not** be held on the same day as dealer sales.

It is a Class 1 misdemeanor for any auction agency to accept for sale any unauthorized vehicle.

Every auction agency shall keep books, records and files. A record shall be kept of every vehicle offered for sale by or through the agency, including the serial numbers or identification numbers, odometer information, and a

description of the vehicle and the name, address and license number of the vehicle dealer who owns the vehicle. If the vehicle is sold, the name, address and license number of the vehicle dealer purchasing the vehicle and the price for which it is sold.

An auction agency shall file a bond in the amount of \$50,000 and shall have a public liability insurance policy of not less than \$300,000.

A dealer auction agency qualifies for dealer “99” auction agency plates. (See Section 6, Dealer License Plates).

An auction agency is required to announce, at the time of sale, if a vehicle being offered has a title (in state or out-of-state) that has been marked denoting any brand or damage. If the auction fails to announce a title brand or damage notation, the purchaser may return the vehicle to the auction within 10 days after receiving the title and the auction agency must make a full refund to the purchaser.

SECTION 10

EMERGENCY VEHICLE DEALER LICENSE

SECTION 10

EMERGENCY VEHICLE DEALER LICENSE

South Dakota law requires that anyone engaged in the business of selling or exchanging new or used authorized emergency vehicles shall have an emergency vehicle dealer's license. An emergency vehicle dealer's license is also required in the event of submission of a bid proposal of an emergency vehicle for sale by a person not exempt under the dealer statute, if the bid proposal is offered in response to a bid request originating in this state.

An "emergency vehicle dealer" is defined as any person who converts or manufacturers authorized emergency vehicles and who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new, or new and used authorized emergency vehicles, or who is engaged wholly or in part in the business of selling new, or new and used authorized emergency vehicles. The term also includes the submission of a bid proposal for the sale of a vehicle if the bid proposal is offered in response to a bid request originating in this state.

An "authorized emergency vehicle" is defined as any vehicle of a fire department and any ambulance and emergency vehicle of a municipal department or public service corporation that are designed or authorized by the Department of Commerce and Regulation.

An emergency vehicle dealer is exempt from the requirement of having its principal place of business in South Dakota and is not required to secure a separate license for each county it operates within.

Any out-of-state dealer that applies for an emergency vehicle dealer's license and whose principal place of business is not located in South Dakota must provide proof it is a licensed dealer in another state and attest that there are no outstanding dealer violations against the dealership. The dealer is allowed to verify that there are no outstanding dealer violations by attesting to such on an affidavit.

The following requirements must be met before a license can be issued:

- 1) Application for license;
- 2) \$300 initial license fee; \$175 renewal license fee;
- 3) \$10,000 surety bond;
- 4) \$300,000 liability insurance on principal place of business (principal place of business does not have to be in South Dakota).

SECTION 11

MANUFACTURER, CUSTOMIZER AND DEALER TEMPORARY PERMITS

SECTION 11

MANUFACTURER, CUSTOMIZER AND DEALER TEMPORARY PERMITS

VIOLATIONS: ANY PERSON FOUND TO BE IN VIOLATION OF THE PERMITTING REQUIREMENTS SHALL BE DENIED A TEMPORARY PERMIT FOR A PERIOD OF ONE YEAR FROM THE DATE OF THE VIOLATION.

MOTORCYCLE AND TRAILER MANUFACTURER/CUSTOMIZER PERMIT:

Any person engaged in the business of manufacturing or customizing motor vehicles may display, but **not** sell, any motor vehicles at an event.

The event must last 3 or more days and the person must register with and purchase a permit from the department at least 5 days before the event.

The fee for a 10-day permit is \$250 if purchased prior to the event; however, if the permit is purchased at the event, the fee is \$500.

A customized motorcycle that was built for and is being displayed during a sponsored event where the participants had to qualify through competition is exempt from the requirement of a manufacturing or customizing event permit. A permit is required if any customized motorcycle is being displayed outside of the sponsored event.

LICENSED DEALER PERMIT:

Any licensed dealer may **sell trailers or motorcycles** at an event.

The event must last 3 or more days and the dealer must register with and purchase a permit from the department at least 5 days before the event.

The dealer must provide proof he/she is a licensed dealer in his/her own state and that his/her dealership has no outstanding dealer violations.

A permit to sell new trailers or motorcycles can only be issued if the trailers or motorcycles being sold are not franchised in this state.

The fee for a trailer dealer permit is \$250, if purchased prior to the event; however, if the permit is purchased at the event, the fee is \$500.

Any licensed dealer may **display only trailers** at an event that lasts 3 more days, regardless of whether or not there is a franchise in this state. The dealer must provide proof of being licensed in another state and must attest to no

outstanding dealer violations. The fee for a 10-day permit is \$250, if purchase prior to the event; however, if the permit is purchased at the event, the fee is \$500.

Any out-of-state boat dealer may **display or sell boats and boat trailers** at an event, if the event lasts 2 or more days and if the dealer registers with and purchases a permit from the department at least 5 days before the event. The fee for a boat dealer permit is \$200 for a 10-day permit. The event must be an organized, sponsored event with no less than 3 licensed boat dealers displaying boats.

OUT-OF-STATE DEALER (CLASSIC VEHICLE OR MOTORCYCLE) – AUCTION PERMIT:

An out-of-state dealer may sell a vehicle that is 20 years old or more or a motorcycle that is 30 years old or more that is titled in the dealer's name at public auction. The dealer must purchase a permit and provide proof of being licensed in another state and must attest to having no outstanding dealer violations. The fee for the permit is \$250 if purchased prior to the auction and \$500 if purchased at or after the auction.

SECTION 12
BUYER'S GUIDE

SECTION 12

BUYER'S GUIDE

As a vehicle dealer, the Federal Trade Commission's (FTC) Used Car Rule affects how you do business. The Used Car Rule requires dealers to post a completed "Buyer's Guide" in the side window or on the rear-view mirror of each used vehicle offered for sale to consumers.

Any car, truck, light duty truck, van, trailer, boat trailer, ATV, jet ski, jet ski trailer, RV, semi truck, etc., or any vehicle with a loaded gross vehicle weight rating of less than 8,500 pounds, a curb weight of less than 6,000 pounds, and frontal area of less than 46 square feet are required to have an FTC Buyers Guide Displayed. The only exemptions to the FTC Buyers Guide rule are motorcycles, some agricultural equipment, and any State Certified Salvage dealer selling a car for junk, salvage, or parts.

The Rule also requires dealers to include a specific disclosure about the Buyer's Guide in the sales contract and to give the purchaser a copy of the Buyer's Guide. Dealers who violate the Used Car Rule may be subject to penalties of up to \$10,000 per violation.

Before a dealer offers a used vehicle for sale to a consumer, a Buyer's Guide must be posted in the vehicle's side window or on the rear-view mirror. A vehicle is considered for sale if the dealer allows a customer to inspect the vehicle for the purpose of purchasing it. A consumer is anyone who is not a dealer.

Buyer's Guides are purchased from business form companies or trade associations. The wording, type style, size and format are specified in the Rule and must be followed. The Rule requires the Buyer's Guide be printed in 100 percent black ink on white stock that is at least 11 inches high and 7-1/4 inches wide. You may use colored ink to fill in the blanks on the Buyer's Guide.

The Buyer's Guide is posted on the inside of a side window or on the rear-view mirror, with the front of the form facing the outside. The dealer is responsible for keeping the Buyer's Guide posted at all times that a vehicle is available for sale to consumers.

For more information or questions concerning the Used Car Rule, call or write the Federal Trade Commission. Free copies of the Rule or the staff's compliance guidelines for the Used Car Rule are available. Contact:

**Federal Trade Commission
6th & Pennsylvania Avenue NW
Washington DC 20580
(202) 326-2222**

SECTION 13

DRIVER'S PRIVACY PROTECTION ACT (DPPA)

Section 13

DRIVER'S PRIVACY PROTECTION ACT

The Driver's Privacy and Protection Act (DPPA) is federal legislation passed in 1994. South Dakota began its implementation in June of 2000. Legislation, effective July 1, 2001, incorporates the federal law into state law.

The DPPA restricts states from disclosing an individual's personal information that is contained in the records of state motor vehicle departments without the individual's consent. The type of information restricted from being released includes: a person's name, address, telephone number, Social Security number, driver's license number.

Disclosure of information is permitted under the following:

- 1) For use by any government agency or by any private person or entity acting on behalf of a federal, state or local agency in carrying out its functions.
- 2) For any state-authorized purpose relating to the operation of a motor vehicle or public safety or for use in connection with car safety, prevention of car theft, and promotion of driver safety.
- 3) For use by a business to verify the accuracy of personal information submitted to that business and to prevent fraud or pursue legal remedies if the information that the individual submitted to the business is revealed to have been inaccurate.
- 4) In connection with court, agency, or self-regulatory body proceedings.
- 5) For research purposes so long as the information is not further disclosed or used to contact the individuals to whom the data pertains.
- 6) For use by insurers in connection with claims investigations, antifraud activities, rating or underwriting.
- 7) To notify vehicle owners that their vehicle has been towed or impounded.
- 8) For use by licensed private investigative agencies or security services for any purpose permitted by the DPPA.
- 9) For use in connection with private toll transportation services.

The DPPA's provisions do not apply solely to states. The Act also regulates the resale and redisclosure of personal information by private persons who have obtained the information from a state DMV. The DPPA establishes several penalties to be imposed on states and individuals that fail to comply with the provisions of the DPPA. The Act makes it unlawful for any person knowingly to obtain or disclose any record for a use that is not permitted under its provisions, or to make a false representation in order to obtain personal information for a motor vehicle record.

SECTION 14

INCENTIVE ADVERTISEMENT RULES

SECTION 14

INCENTIVE ADVERTISING

The department has promulgated rules to regulate the advertising of vehicles offered for sale by vehicle dealers (ARSD 61:24:07). These rules concern the price advertising, availability and general advertising practice of selling motor vehicles.

An advertisement is defined (SDCL 32-6B-64) as any oral, written or graphic statement that offers for sale a particular vehicle or vehicle parts and services or which indicates the availability of a vehicle or vehicle goods or services.

The term includes any statement or representation made in a newspaper, periodical, pamphlet, circular, other publications, or on a radio or television; contained in any notice, handbill, sign, billboard, poster, bill, catalog or letter; or printed on or contained in any tag or label that is attached to a vehicle.

SECTION 15

MANUFACTURER'S STATEMENT OF ORIGIN/MANUFACTURER'S CERTIFICATE OF ORIGIN AND VEHICLE IDENTIFICATION NUMBER REQUIREMENTS

Section 15

MANUFACTURER'S STATEMENT OF ORIGIN/MANUFACTURER'S CERTIFICATE OF ORIGIN AND VEHICLE IDENTIFICATION NUMBER REQUIREMENTS

The Division of Motor Vehicles (DMV) recommends that the following MSO/MCO (Manufacturer's Statement of Origin/Manufacturer's Certificate of Origin) and VIN (Vehicle Identification Number) specifications be used by any vehicle manufacturers operating within the state.

MANUFACTURER'S STATEMENT OF ORIGIN/MANUFACTURER'S CERTIFICATE OF ORIGIN (MSO/MCO):

At this time, the DMV does not endorse any specific MSO/MCO printer and has no specific requirements for the content of the MSO/MCO form itself; however, the following information must be contained on the document:

1. Date
2. Invoice Number
3. Vehicle Identification Number
4. Vehicle Year
5. Vehicle Make
6. Vehicle Body Type
7. Vehicle Shipping Weight, Horse Power, or Number of Cylinders
8. Series/Model
9. Name and Address of Distributor/Dealer
10. Signature of Authorized Representative
11. City and State of Authorized Representative

12. On the face of the MSO/MCO, in the assignment area, the manufacturer's name and address and a signature area for manufacturer's signature.

The DMV recommends that the security standards established by the American Association of Motor Vehicle Administrators (AAMVA) be followed:

1. Paper

- (a) Sensitized Security Paper--paper that is reactive to chemicals commonly used to alter documents.

- (b) Non-Optical Brightener Paper--paper without added optical brighteners that will not fluoresce under ultraviolet light.

2. Engraved Border--a border produced from engraved artwork that shall appear on the front of the document.

3. (a) Prismatic--rainbow printing that is used as a deterrent to color copying, and/or

- (b) Copy Void Pantograph--the word "void" appears when the document is copied.

4. Complex Colors--colors that are developed by using a mixture of two or more of the primary colors (red, yellow, or blue) and black if required.

5. Erasable Fluorescent Background Inks--fluoresces under ultraviolet light and reacts to any attempt to erase in such a manner as to be immediately detectable.

6. Background Security Design--a repetitious design consisting of a pattern that hinders counterfeiting efforts.

7. Microline--a line of small alpha characters in capitol letters that requires a magnifying glass to read.

8. Consecutively Numbered--documents that contain a number that is consecutively numbered for control purposes.

9. (a) Security Thread--with or without watermark, and/or

- (b) Intaglio Print--with or without latent image.

DOCUMENT SIZE--“Certificates of Origin” size specifications shall be seven (7) inches by eight (8) inches.

PAPER STOCK--Sixty (60) pound offset or equivalent durability.

CONSTRUCTION--Unless otherwise specified by the user, the form should be constructed and fan-folded for use on high-speed pinfed computer printer and/or continuous typewriters.

LAYOUT--Text matter space for 1/10-inch horizontal and 1/6 inch deep characters per AAMVA H12 Policy for standard format.

FACILITY SECURITY--To insure the integrity of the manufacturer’s “Certificate of Origin” the user should require the vendor to maintain secure printing and storage facilities.

VEHICLE IDENTIFICATION NUMBERS (VIN):

Title 49, Code of the Federal Regulations, Parts 565 and 571 (Federal Motor Vehicle Safety Standards Number 115) specify the format, content and location of manufacturer’s certification labels and the VIN system currently used to simplify vehicle information retrieval and increase the efficiency of vehicle defect recall campaigns. These regulations apply to trailers as well as other vehicles.

Since August 1978, the approved VIN system has consisted of seventeen (17) digits. However, some trailer manufacturers were still using systems consisting of fewer than seventeen digits that did not incorporate any manufacturer identification, resulting in several different trailers having identical numbers. As a result, the Division of Motor Vehicles passed Administrative Rule 64:30:02:04:01, “VIN Requirements for Trailers” that requires persons manufacturing trailers use a seventeen (17) digit VIN on each trailer produced. This Rule went into effect January 1, 1989, and applied to all trailers manufactured after January 1, 1989.

Part of the VIN consists of a unique identifier of the manufacturer. It is the responsibility of the manufacturer to obtain an assigned World Manufacturer Identifier that is supplied by the Society of Automotive Engineers (SAE) at no charge. We have been asked that your initial contact concerning VIN requirements be made to the National Highway Traffic Safety Administration (NHTSA), VIN Coordinator, at 202-366-5297. [We have been informed that all

information pertaining to serial numbers (cars, trailers, motorcycles, etc., is contained in the trailer packet from NHTSA.] Information on assignments of the manufacturer identifiers can be made through the Society of Automotive Engineers at 724-776-4841, extension 8511.

Title 49 of the Code of Federal Regulations and other federal motor vehicle safety standards can be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402 (telephone: 202-512-1800). These are also available in many law or general libraries.

It is a Class 6 felony to remove or alter a VIN plate on a vehicle. In the event the VIN on a vehicle does not match the VIN on the title or paperwork, the vehicle should be removed from the dealership lot and the Division of Motor Vehicles or the Highway Patrol should be notified.

Windshield Replacement:

A VIN number must be visible from outside the vehicle when viewed through the windshield. If the windshield has been replaced with an incorrect model, the VIN will not be visible. In this situation, the windshield must be replaced with the correct model to conform with VIN requirements.

SECTION 16

ONLINE DEALER COMPUTER SYSTEM

ALL LICENSED DEALERS, UNLESS OTHERWISE EXEMPTED, ARE REQUIRED TO ACCESS THE STATES' ONLINE COMPUTER SYSTEM FOR VERIFYING VEHICLE OWNERSHIP AND RECORDING CHANGES TO VEHICLE OWNERSHIP.

Through administrative rule (ARSD 61:24:03:11), a transaction fee of \$.25, per transaction is assessed for on-line access to the title and registration system.

SECTION 17

PLATE WITH OWNER LICENSING SYSTEM

Section 17

Plate With Owner Licensing System

In July 2008, the state's vehicle registration system changed from license plate with vehicle to license plate with owner.

The ownership of a vehicle, as stated on the title, determines ownership of a plate. All owners on a vehicle's current title record or a pending title record are also owners of any plate attached to that vehicle and any individual listed as an owner on the title can take action affecting the plate.

Exceptions as to who actually owns the plates apply to special and distinctive plates that require qualification (firefighter, veteran, etc.). The person who qualifies for the plate is the plate owner and the only one that can take action affecting the plate.

A person cannot move a plate from vehicle to vehicle. The vehicle ownership must transfer before a plate can be detached from the system and removed from the vehicle. So, under most circumstances, the plate can only be detached if:

- 1) the plate owner no longer owns the vehicle that was originally attached to the plate;
- 2) the vehicle originally attached to the plate is junked; or
- 3) the vehicle originally attached to the plate is titled out-of-state.

Similarly, an unattached plate cannot be moved from vehicle to vehicle and can only be attached to an acquired vehicle.

Plate with owner will apply to commercial vehicles (which will be renewed under our staggered registration renewal system) and noncommercial vehicles, trailers, motorcycles and historical plated vehicles. It will not apply to boats, snowmobiles, trailer ID plated vehicles or construction plates.

There will be situations when plates may stay with the vehicle when ownership of a vehicle is being transferred. A plate can remain attached to the vehicle when the ownership is transferred if one of the following exemptions apply: inheritance; transfer between immediate family members; transfer of ownership as the result of a transfer of a business ownership (exemptions 5-11).

Plus, a historical plate or a personalized plate can stay attached upon transfer of vehicle ownership provided the former owner of both the vehicle and the plate authorize the reassignment of ownership of the plate to the new owner.

Our specialty and distinctive plates (personalized, veteran or military, radio, fire fighter, etc.), will no longer be secondary plates but will now be the primary plate; 2 sets of plates will no longer be issued. Upon initial application for a special/distinctive plate, a permit will be used in the interval between ordering and receiving the plates.

An expired plate that is attached to a vehicle on the system will remain valid and may be renewed at any time within the plate period. However, an expired plate that is unattached is no longer valid and the plate cannot be used.

A license plate transfer can only be made between similarly plated vehicles – example: a license plate transfer from a motorcycle to an automobile is not allowed. A license plate transfer is allowed between vehicles registered as noncommercial, noncommercial gross weight or a motor home.

A plate cannot physically be attached to a vehicle until the owner goes to the county treasurer and completes the registration. In situations where a vehicle is sold and a plate is not immediately used, no refund is allowed, but a credit for the remaining months left on the plate will be given when it is attached to a newly acquired vehicle. If the plate expires before attachment, the plate is no longer valid.

Attach/Detach

Because we so often refer to a plate that is attached or detached within the system, the definitions of “attach” and “detach” are worth mentioning.

Attach – Refers to action affecting a vehicle’s record within the system. Attaching a plate associates, or ties, a specific license plate number with a specific vehicle within the DMV system records, as opposed to physically securing the actual license plate to a vehicle. A license plate number may be “attached” to a specific vehicle. Under certain conditions, a plate number, which is attached, may be “detached” from a vehicle. A plate that is not attached to a vehicle is an “unattached” plate.

Detach – Refers to action within the system that removes the attachment between a vehicle and a specific license plate number.

Report of Sale

A very important part of the new system is the report of sale (ROS). A report of sale must be completed by the seller when a vehicle is sold or transferred. The

ROS is a notification that a sale has occurred. It will also be used as a means to make a license plate eligible for attachment to another vehicle.

The report of sale can be accomplished in several ways:

1. A new certificate of title has been designed that contains a tear-off form attached to the bottom of the title, the seller is responsible for completing the information and forwarding the form to the county within 15 days of the sale of the vehicle. The form is bar-coded, which allows it to be scanned and the vehicle information and seller information automatically populated on to the ROS screen. Information that has to be entered includes: purchaser information, date of sale, selling price, purchaser's name and identification.
2. Internet Notification: A seller may go online (SDcars.org) to the state's website and enter this information.
3. During the registration process, if the plate that is selected for attachment to a new vehicle is currently attached to another vehicle, the system activates the ROS screen for updating (detaching the plate) before the registration can be completed.
4. For dealers online to the states' computer system, when the transaction is entered online (entry must be completed within 15 days of the date of sale), a pending title record is created, which replaces any need for a ROS form. If, however, a vehicle is sold and the title is not available within 15 days of the date of sale, the dealer is required to create a report of sale on the system. Once the title is received, the transaction should immediately be processed online. If the sale involves a trade-in, the system will capture the trade-in information and automatically create a ROS on the vehicle that was traded in. [NOTE: Transactions involving out-of-state residents are not processed online and no report of sale is required.]

The ROS serves only as notification of a sale and does not generate any action against the title or registration record, other than to make a plate previously attached to a vehicle eligible for attachment to a different vehicle.

A ROS between private parties will be regarded as mandatory and must be filed within 15 days of date of sale. Failure of a seller to do so is a Class 2 misdemeanor. It is also important that we stress why a ROS is required:

1. Seller must remove the plate from the sold vehicle and, if the buyer has not yet transferred title, file a ROS before the plate that was removed may be registered and attached to another vehicle.

2. Upon receipt of the ROS, the motor vehicle record is updated to reflect the sale of the vehicle and the seller's plate is eligible to be detached.
3. Filing a report of sale may protect the seller from liability that may result from moving or operating a vehicle after the date of sale.

Based on the ROS, the system generates an alert in the event a pending title is not created within 45 days of the date of sale. This alert is used to automatically generate a letter to the new purchaser advising the purchaser of the requirements to transfer title and that penalty and interest is accruing. If no action is taken after that contact, further steps can be taken.

Secondary Plates:

A plate ordered permit is available for an applicant to use during the interim of plate production of a distinct or specialty plate. Like the regular county plate, all owners of the vehicle own the specialty plate, unless it is a plate that the applicant must qualify for in order to receive it, such as National Guard, physically disabled person, prisoner of war, etc.

SECTION 18

TITLE AND REGISTRATION FORM REQUEST

GENERAL SUPPLY REQUEST, MV-201

SECTION 19

SUPPLEMENTAL INFORMATION

The Office of Dealer Licensing is a section within the Division of Motor Vehicles, Department of Revenue. This section is comprised of 4 dealer inspectors. We encourage you to contact an inspector anytime you have questions or problems relating to motor vehicle dealer laws.

DEALER INSPECTORS

Pilo Pena - Rapid City - 394-3394

Mike Mehlhaff - Pierre - 773-3541

Lori Colberg - Watertown - 882-5192

Ron Rysavy - Sioux Falls - 367-5814

OFFICE OF DEALER LICENSING - PIERRE

Main Office - 773-4416

Monica Weischedel – Training - 773-7222

Kendall Velder - Supervisor - 773-3541

Peggy Laurenz - Director of Motor Vehicles - 773-3541

Division of Motor Vehicles, 445 East Capitol Avenue, Pierre SD 57501-3185

DMV FAX #605/773-2549

DMV Website: <http://www.state.sd.us/drr2/motorvehicle/index.htm>

DMV E-Mail: MotorV@state.sd.us